(4) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DON appellate authority has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum on the three processing tracks established for initial requests. (See § 701.8(f)).

(5) If additional time is needed due to unusual circumstances, the final decision may be delayed for the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request.

(6) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The appellate authority shall continue to process the case expeditiously.

(m) *FOIA litigation.* The appellate authority is responsible for providing CNO (N09B30) with a copy of any FOIA litigation filed against the DON and any subsequent status of the case. CNO (N09B30) will, in turn, forward a copy of the complaint to DFOISR for their review.

Subpart B—FOIA Definitions and Terms

§ 701.13 5 U.S.C. 552(a)(1) materials.

Section (a)(1) of the FOIA requires publication in the FEDERAL REGISTER of descriptions of agency organizations, functions, substantive rules, and statements of general policy.

§ 701.14 5 U.S.C. 552(a)(2) materials.

Section (a)(2) of the FOIA requires that certain materials routinely be made available for public inspection and copying. The (a)(2) materials are commonly referred to as "reading room" materials and are required to be indexed to facilitate public inspection. (a)(2) materials consist of:

(a) *5 U.S.C. 552(a)(2)(A) records.* Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(b) *5 U.S.C. 552(a)(2)(B) records.* Statements of policy and interpretations that have been adopted by the agency and are not published in the FEDERAL REGISTER.

(c) *5 U.S.C. 552(a)(2)(C) records.* Administrative staff manuals and instructions, or portions thereof, that establish DON policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DON activity. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

(d) *5 U.S.C. 552(a)(2)(D) records.* Those (a)(2) records, which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. These records are referred to as FOIA-processed (a)(2) records. DON activities shall decide on a case-by-case basis whether records fall into this category based on the following factors: previous experience of the DON activity with similar records; particular circumstances of the records involved, including their nature and the type of information contained in them; and/or the identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.